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Region IX  
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**\*\*FILED\*\***  
**23 JULY 2021**  
**U.S. EPA - REGION IX**

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of:	)	Docket No. FIFRA-09-2021-0057
	)	
Forma Brands LLC,	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
Respondent.	)	pursuant to 40 C.F.R. §§ 22.13(b),
	)	22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region IX, and Forma Brands LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for (1) the sale and/or distribution of a misbranded pesticidal device in violation of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), and (2) the failure to file a report required by FIFRA (*e.g.*, a “Notice of Arrival” for an imported pesticide or device) in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

2. Complainant is the Manager of the Toxics Section in the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to

bring this action and to sign a consent agreement settling this action.

3. Respondent is Forma Brands LLC (parent company to Morphe, LLC), a California corporation with headquarter offices located at 22 4<sup>th</sup> Street, Floor 4, in San Francisco, California, 94103-3172.

#### B. STATUTORY AND REGULATORY BASIS

4. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person to distribute or sell to any person a pesticidal device which is misbranded.

5. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other living micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

8. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines a “device,” in part, as any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life.

9. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced.

10. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or

1 wrappers.

2 11. Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), defines “labeling,” in part, as  
3 all labels and all other written, printed or graphic matter accompanying the pesticide or device at  
4 any time.

5 12. Forty C.F.R. § 156.10(a)(1)(v) states that every pesticide product shall bear a label  
6 containing, inter alia, the producing establishment number as prescribed in paragraph (f) of this  
7 section.

8 13. Forty C.F.R. § 156.10(f) states that the producing establishment registration number  
9 preceded by the phrase “EPA Est.”, of the final establishment at which the product was produced  
10 may appear in any suitable location on the label or immediate container.

11 14. The importation of pesticides and devices into the United States is governed by  
12 Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations  
13 promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator  
14 of the EPA (the “Administrator”). These regulations are found at 19 C.F.R. Part 12.

15 15. 19 C.F.R. § 12.112 states, in part, that an importer desiring to import pesticides or  
16 devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides  
17 and Devices (Environmental Protection Agency Form 3540-1, or “Notice of Arrival”), prior to  
18 the arrival of the shipment in the United States. In the alternative, the importer or the importer’s  
19 agent may file an electronic equivalent to the Notice of Arrival. See also Section 17(c) of  
20 FIFRA, 7 U.S.C. § 136o(c).

21 16. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for any  
22 person who is a registrant, wholesaler, dealer, retailer, or other distributor (*e.g.*, importer) to fail  
23 to file reports required by FIFRA.

24 17. The Administrator of EPA may assess a civil penalty against any registrant,  
25 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any  
26 provision of FIFRA of up to \$20,528 for each offense that occurred after November 2, 2015  
27 where penalties are assessed on or after December 23, 2020. See Section 14(a)(1) of FIFRA, 7  
28 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at

85 Fed. Reg. 83818 (December 23, 2020).

C. ALLEGED VIOLATIONS

18. At all times relevant to this CAFO, Respondent was a corporation and therefore a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

19. At all times relevant to this CAFO, the label and/or labeling for the “Morphe UV Disinfection Box” product bore claims that it “kills up to 99.9% of germs in 3 minutes,” “disinfect[s],” “sanitizes,” and “steriliz[es].” The “Morphe UV Disinfection Box” product is thus an instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any “pest,” as that term is defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and is thereby a “device,” as that term is defined in Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

20. On or about December 18, 2020, Respondent “distributed or sold,” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the “Morphe UV Disinfection Box” device by importing it into the United States.

21. The label on the “Morphe UV Disinfection Box” device that Respondent imported into the United States on or about December 18, 2020, did not bear the registration number assigned under Section 7 to the establishment in which it was produced.

22. Respondent’s failure to identify on the label the EPA producing establishment registration number of the final establishment in which the “Morphe UV Disinfection Box” device was produced, as required by 40 C.F.R. §§ 156.10(a)(1)(v) and 156.10(f), constitutes “misbranding,” as that term is defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

23. Consequently, the distribution/importation into the United States of the “Morphe UV Disinfection Box” device by the Respondent on or about December 18, 2020, constitutes one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

24. On or about December 18, 2020, Respondent failed to submit to the EPA a complete and accurate Notice of Arrival (or a digital alternative pursuant to the U.S. Department of Homeland Security, Bureau of Customs and Border Protection’s (“CBP”) Automated

1 Commercial Environment (“ACE”) system) for the importation into the United States of the  
2 “Morphe UV Disinfection Box” device prior to the arrival of its shipment under Entry Number  
3 CHQ-07197504 in the United States as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c),  
4 and 19 C.F.R. § 12.112. While a Notice of Arrival had been filed via the ACE system prior to  
5 the shipment’s arrival, it presented an erroneous EPA establishment number and failed to provide  
6 required photographs of the product label and was thus incomplete and inaccurate.

7 25. On or about December 27, 2020, Respondent failed to submit to the EPA a complete  
8 and accurate Notice of Arrival (or a digital alternative pursuant to CBP’s ACE system) for the  
9 importation into the United States of the “Morphe UV Disinfection Box” device prior to the  
10 arrival of its shipment under Entry Number CHQ-07221668 in the United States as required by  
11 Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), and 19 C.F.R. § 12.112. While a Notice of Arrival  
12 had been filed via the ACE system prior to the shipment’s arrival, it presented an erroneous EPA  
13 establishment number and failed to provide required photographs of the product label and was  
14 thus incomplete and inaccurate.

15 26. By failing to submit to the EPA a complete and accurate Notice of Arrival (or a  
16 digital alternative pursuant to CBP’s ACE system) for the importation into the United States of  
17 the “Morphe UV Disinfection Box” device prior to the arrival of each of the aforementioned two  
18 shipments in the United States on or about December 18, 2020, and December 27, 2020,  
19 Respondent failed to file a report required by FIFRA in each instance and thus committed two  
20 violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

#### 21 D. RESPONDENT’S ADMISSIONS

22 27. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
23 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
24 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
25 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
26 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
27 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
28 proposed Final Order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 28. In full and final settlement of the violations specifically alleged in Section I.C of this  
3 CAFO, Respondent shall pay a civil administrative penalty of TWENTY-TWO THOUSAND  
4 AND EIGHTY-THREE DOLLARS (\$22,083). Respondent shall pay this civil penalty within  
5 thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a  
6 certified or cashier's check, including the name and docket number of this case, for the amount,  
7 payable to "Treasurer, United States of America," (or be paid by one of the other methods listed  
8 below) and sent as follows:

9 Regular Mail:

10 U.S. Environmental Protection Agency  
11 Fines and Penalties  
12 Cincinnati Finance Center  
13 PO Box 979077  
14 St. Louis, MO 63197-9000

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New  
17 York City with the following information:  
18 Federal Reserve Bank of New York  
19 ABA = 021030004  
20 Account = 68010727  
21 SWIFT address = FRNYUS33  
22 33 Liberty Street  
23 New York, NY 10045  
24 Beneficiary = U.S. Environmental Protection Agency

25 Certified or Overnight Mail:

26 U.S. Bank  
27 1005 Convention Plaza  
28 Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA = 051036706  
Account = 31006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court  
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov  
Enter "SFO 1.1" in the search field  
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following regular mail or email addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
R9HearingClerk@epa.gov

Brandon Boatman  
Toxics Section  
Enforcement and Compliance Assurance Division (ENF-2-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
boatman.brandon@epa.gov

29. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

30. If Respondent fails to pay the assessed civil administrative penalty of TWENTY-TWO THOUSAND AND EIGHTY-THREE DOLLARS (\$22,083), as identified in Paragraph 28, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed penalty.



1 Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated  
2 penalties are paid and shall become due and payable upon EPA's written request. Failure to pay  
3 the civil administrative penalty specified in Paragraph 28 by the deadline specified in that  
4 Paragraph may also lead to any or all of the following actions:

5 (1) EPA may refer the debt to a credit reporting agency, a collection  
6 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
7 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
8 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
9 collection proceeding.

10 (2) The U.S. Government may collect the debt by administrative offset  
11 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
12 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
13 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
14 C.F.R. §§ 13(C) and 13(H).

15 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
16 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
17 business with EPA or engaging in programs EPA sponsors or funds.

18 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
19 Government may assess interest, administrative handling charges, and nonpayment penalties  
20 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
21 civil administrative penalty specified in Paragraph 28 by the deadline specified in that Paragraph.

22 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
23 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
24 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
25 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
26 (30) days of the effective date of this CAFO.

27 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
28 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,



1 based on either actual or average cost incurred (including both direct and indirect costs), for  
2 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

3 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
4 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
5 may be assessed on all debts more than ninety (90) days delinquent.

#### 6 F. CERTIFICATION OF COMPLIANCE

7 31. In executing this CAFO, Respondent certifies that the information it has supplied  
8 concerning this matter was at the time of submission, and is at the time of signature to this  
9 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged  
10 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading  
11 information can result in significant penalties, including the possibility of fines and  
12 imprisonment for knowing submission of such information.

#### 13 G. RETENTION OF RIGHTS

14 32. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
15 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
16 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
17 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
18 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
19 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
20 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
21 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

22 33. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
23 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
24 and permits.

#### 25 H. ATTORNEYS' FEES AND COSTS

26 34. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
27 this proceeding.  
28

I. EFFECTIVE DATE

35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.


J. BINDING EFFECT

36. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

37. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT FORMA BRANDS LLC:

02-JUL-2021  
DATE

  
BRENDA ALVAREZ  
Director, Logistics and Trade Compliance  
Forma Brands LLC  
22 4<sup>th</sup> Street, Floor 4  
San Francisco, CA 94103-3172

FOR COMPLAINANT EPA:

7/15/2021  
DATE

MATTHEW SALAZAR  
Digitally signed by  
MATTHEW SALAZAR  
Date: 2021.07.15  
11:22:05 -07'00'  
MATT SALAZAR, P.E.  
Manager, Toxics Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA and Forma Brands LLC having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2021-0057) be entered, and  
Respondent shall pay a civil administrative penalty in the amount of TWENTY-TWO  
THOUSAND AND EIGHTY-THREE DOLLARS (\$22,083) and comply with the terms and  
conditions set forth in the Consent Agreement.

STEVEN JAWGIEL

Digitally signed by STEVEN

JAWGIEL

Date: 2021.07.22 08:41:43 -07'00'

\_\_\_\_\_  
DATE

\_\_\_\_\_  
STEVEN JAWGIEL

Regional Judicial Officer

U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order (Docket No. FIFRA-09-2021-0057) was filed with the Regional Hearing Clerk and a true and correct copy of the same was sent to the following parties:

VIA ELECTRONIC MAIL

For Respondent:

Brenda Alvarez  
Director, Logistics and Trade Compliance  
Forma Brands LLC  
22 Fourth Street (Floor 4)  
San Francisco, CA 94103-3172

Brenda.Alvarez@formabrands.com

VIA ELECTRONIC MAIL

For Complainant:

Edgar Coral  
Assistant Regional Counsel (ORC-2)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Coral.Edgar@epa.gov

Armsey,  
Steven

Digitally signed by  
Armsey, Steven  
Date: 2021.07.23  
20:44:14 -07'00'

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Regional Hearing Clerk  
U.S. EPA, Region IX

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Date